

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *

* UNITED STATES OF AMERICA *
*
* v. * CRIMINAL ACTION
* No. 13-MJ-02016-MBB
*
* DZHOKHAR TSARNAEV *
*
* * * * *

BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE
INITIAL APPEARANCE
April 22, 2013

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE (By AUSA William Weinreb and AUSA Aloke S. Chakravarty) 1 Courthouse Way, Suite 9000, Boston, Massachusetts 02210, on behalf of the United States of America

OFFICE OF THE FEDERAL PUBLIC DEFENDER, (By Miriam Conrad, Esq., William Fick, Esq., and Timothy Watkins, Esq.) 51 Sleeper Street, 5th Floor, Boston, Massachusetts 02210, on behalf of the Defendant

Beth Israel Deconess Medical Center
330 Brookline Avenue
Boston, Massachusetts 02125

James P. Gibbons, RPR, RMR
Official Court Reporter
1 Courthouse Way, Suite 7205
Boston, Massachusetts 02210
jmsgibbons@yahoo.com

P R O C E E D I N G S

THE COURT: I will ask the doctor whether or not the patient is alert.

You can rouse him.

DR. ODOM: How are you feeling?

Are you able to answer some questions?

THE DEFENDANT: (Defendant nods affirmatively.)

THE CLERK: United States District Court for the District of Massachusetts is now in session, the Honorable Marianne B. Bowler presiding.

Today is Monday, April 22, 2013. The case of U.S. v. Tsarnaev, Magistrate Judge No. 13-2106, will now be heard.

Will counsel please identify themselves for the record.

MR. WEINREB: Good morning, your Honor. William Weinreb for the United States.

MR. FICK: Good morning, your Honor. William Fick for Mr. Tsarnaev.

THE COURT: And you have had an opportunity to speak with him?

MR. FICK: Very briefly, your Honor.

THE COURT: So you have your lawyers here.

THE DEFENDANT: (Defendant nods affirmatively.)

THE COURT: Mr. Tsarnaev, I am Magistrate Judge Bowler. This hearing is your initial appearance before the Court. We are here because you have been charged in a

1 federal criminal complaint.

2 At this hearing, I will advise you of your
3 constitutional and legal rights. I will tell you about the
4 charges against you and the penalties that the Court could
5 impose if you are found guilty.

6 You have been charged with (1): Use of a weapon of
7 mass destruction, in violation of 18, United States Code,
8 Section 2332a(a); and malicious destruction of property
9 resulting in death, in violation of 18, United States Code,
10 Section 844(i).

11 Mr. Weinreb, what are the maximum penalties?

12 MR. WEINREB: Your Honor, the maximum penalty on
13 each count is death, or imprisonment for any term of years,
14 or life.

15 THE COURT: Is there a fine?

16 MR. WEINREB: A fine of up to \$250,000.

17 THE COURT: I will tell you about your right to
18 counsel, and I will consider conditions of release pending
19 further court proceedings; that is, whether or not you
20 should be detained and what amount of bail should be set.

21 This is not a trial, and you will not be called upon to
22 answer the charges at this time.

23 If at any time I say something you do not understand,
24 interrupt me and say so; is that clear?

25 THE DEFENDANT: (Defendant nods affirmatively.)

1 THE COURT: All right. I note that the defendant
2 has nodded affirmatively.

3 As a first step in this hearing, I am going to tell you
4 about your constitutional rights.

5 You have the right under the Constitution of the United
6 States to remain silent. Any statement made by you may be
7 used against you in court, and you have the right not to
8 have your own words used against you.

9 You may consult with an attorney prior to any
10 questioning, and you may have the attorney present during
11 questioning.

12 Counsel will be appointed without charge if you cannot
13 afford counsel.

14 If you choose to make a statement or to answer
15 questions without the assistance of counsel, you may stop
16 answering at any time.

17 This right means you do not have to answer any
18 questions put to you by law enforcement agents or by the
19 Assistant United States Attorney, Mr. Weinreb.

20 I want to make it clear. You are not prohibited from
21 making statements, but that if you do, they can be used
22 against you. You are not required to make a statement at
23 this initial appearance, and any statement you do make may
24 be used against you.

25 Finally, if I ask you any questions here in this

1 hearing or at any future hearing which you think might
2 incriminate you, you have the right not to answer.

3 Do you understand everything I have said about your
4 right to remain silent?

5 THE DEFENDANT: (Defendant nods affirmatively.)

6 THE COURT: Again I note that the defendant has
7 nodded affirmatively.

8 As I said earlier, you have the right to retain
9 counsel, to be represented by counsel, and to have the
10 assistance of counsel at every critical stage of these
11 proceedings.

12 You have the right to an attorney at this initial
13 appearance, during any questioning, at any lineup, and at
14 all proceedings in court.

15 You also have the right to have this Court assign
16 counsel if you cannot afford counsel or if you cannot obtain
17 counsel.

18 Can you afford a lawyer?

19 THE DEFENDANT: No.

20 THE COURT: Let the record reflect that I believe
21 the defendant has said, "No."

22 I have provisionally appointed the federal defender,
23 Mr. Fick, to represent you in this matter. At some time he
24 will give you a financial affidavit to fill out. The
25 information you put in the affidavit regarding your

1 financial assets will assist me in determining whether or
2 not you are eligible for the appointment of counsel. I
3 remind you that the affidavit is filed under the pains and
4 penalties of perjury, which means that if the information
5 you put in the affidavit is false, you could be prosecuted
6 for perjury and, if convicted, be subject to a fine of up to
7 \$250,000 and/or five years in jail.

8 In addition, if there is any change in your financial
9 status, you have an obligation to inform the Court.

10 Ordinarily, I would be asking the bail question.

11 MR. FICK: I am going to defer that question at
12 this time, your Honor, and agree to voluntary detention
13 without prejudice.

14 THE COURT: All right.

15 For the record, what is the government moving for?

16 MR. WEINREB: Your Honor, the government moves for
17 the defendant to be detained pending trial pursuant to
18 3142(f)(1)(A), on the grounds that this is a crime of
19 violence; 3142(f)(1)(B), on the grounds that this is a crime
20 that carries a maximum sentence of life or death; and under
21 3142(f)(2)(A), on the grounds that the defendant is a risk
22 of flight; and 3142(f)(2)(B), on the grounds that the
23 defendant may intimidate witnesses if released.

24 THE COURT: All right.

25 I note that the defendant has entered into a period of

1 voluntary detention without prejudice.

2 Do counsel want to be heard on any other matters?

3 MR. WEINREB: No, your Honor.

4 MR. FICK: No, your Honor.

5 THE COURT: At this time, at the conclusion of the
6 initial appearance, I find that the defendant is alert,
7 mentally competent, and lucid. He is aware of the nature of
8 the proceedings.

9 All right, we stand in recess.

10 (Pause in proceedings.)

11 THE CLERK: Resuming on the record Magistrate Judge
12 No. 13-2016, U.S. v. Tsarnaev.

13 THE COURT: The defendant is now remanded from the
14 custody of the agents present to the United States Marshals
15 Service.

16 MS. CONRAD: Your Honor, may I just inquire about
17 access to counsel?

18 MR. WEINREB: Your Honor, the government has no
19 objection to the defendant having access to his counsel,
20 consistent with whatever the Marshals and --

21 THE COURT: And consistent with hospital regulation
22 hours and that sort of thing.

23 MS. CONRAD: Right. Well, we can talk off the
24 record about how we can arrange that.

25 Thank you.

1 MR. CHAKRAVARTY: So there is no next date
2 scheduled in the case?

3 THE COURT: A probable cause hearing?
4 Off the record.

5 (Discussion between the Court and counsel off the
6 record.)

7 THE COURT: By agreement of counsel, Mr. Garvin?

8 THE CLERK: How about the 30th of May in the
9 morning, 10 a.m?

10 MR. WEINREB: That's fine.

11 MR. WATKINS: That's fine.

12 MR. FICK: That's fine.

13 THE COURT: And I note that this delay is
14 occasioned by agreement of counsel.

15 All right.

16 (Proceedings adjourned.)
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/James P. Gibbons

April 22, 2013

James P. Gibbons

JAMES P. GIBBONS, CSR, RPR, RMR
Official Court Reporter
1 Courthouse Way, Suite 7205
Boston, Massachusetts 02210
jmsgibbons@yahoo.com